

From: Winston, Joel
Sent: Friday, August 06, 2010 9:06 AM
To: Brown, Allison
Subject: Fw: Supplement to previously filed comments on Telemarketing Sales Rule - Debt Relief Amendments - R411001

From: Mariana Bekker <MBekker@usoba.org>
To: Leibowitz, Jonathan D.
Cc: Winston, Joel
Sent: Thu Jul 22 16:36:51 2010
Subject: Re: Supplement to previously filed comments on Telemarketing Sales Rule - Debt Relief Amendments - R411001

(Sent on behalf of John Ansbach, USOBA Legislative Director)

July 22, 2010

Federal Trade Commission
Office of the Secretary
Consumer Response Center
600 Pennsylvania Avenue, NW
Washington, DC 20580-0001

Re: Supplement to previously filed comments on Telemarketing Sales Rule – Debt Relief Amendments – R411001

Dear Chairman Leibowitz:

As the Commission completes its work regarding rule making in the debt settlement industry, we wanted to make you aware of three just published articles from the *Texas Review of Law and Politics*, which may be helpful. Below is a brief description of each published article; please do consider this as our express request that this and these articles be placed on the public record of this rulemaking.

“Tax-exempt Credit Counseling Organizations and the Future of Debt Settlement Services,” is authored by Ronald D. Kerridge, a partner with K&L Gates LLP, and Robert E. Davis, also a partner with K&L Gates LLP who served as Deputy Assistant Attorney General/Tax/Department of Justice. This paper examines whether consumer credit counseling services, currently set up as not-for-profit entities, can legally make the transition to providing debt settlement services in the event that current providers of such services are largely eliminated; the paper concludes that such providers will encounter extremely significant legal and regulatory challenges in attempting to meet these consumer needs.

“The Bear Hug that is Crushing Debt-Burdened Americans: Why Overzealous Regulation of the Debt-Settlement Industry Ultimately Harms the Consumers It Means to Protect,” is authored by Derek S. Witte, tenure-track Associate Professor, Thomas M. Cooley Law School. This paper asserts that DSCs need to be able to recover at least a portion of their costs of rendering

services, as they render them. Even if a contingency model were workable, prohibiting DSCs from collecting payment as services are rendered will require consumers who complete the program to subsidize those who don't complete, but nonetheless obtain value, making it difficult if not impossible for legitimate DSCs to compete with those who are not legitimate, resulting in misaligned incentives for DSCs, and ultimately harming consumers.

"Hid(ing) Elephants in Mouseholes: The FTC's Unwarranted Attempt to Regulate the Debt-Relief Services Industry Using Rulemaking Authority Purportedly Granted by the Telemarketing and Consumer Fraud and Abuse Prevention Act," by Michael Thurman and Michael Mallow, both partners at Loeb & Loeb LLP in Los Angeles. The authors of this article assert that the FTC has engaged in a significant expansion of legislative authority in order to try to regulate the debt settlement industry and that such activism is unwarranted, illegal and risky.

Thank you as always for your willingness to continue to consider these very important consumer protection matters.

Sincerely,

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